

WALLACE C. DOOLITTLE, ESQ. (SBN 158116)
JAMES P. DOWNS, ESQ. (SBN 139489)
LAW OFFICES OF WALLACE C. DOOLITTLE
555 California Street, Suite 300
San Francisco, California 94104

TELEPHONE: (415) 568-2249
FACSIMILE: (415) 634-1303
EMAIL: doolittlew@doolittlelaw.com

New York Counsel Seeking Admission Pro Hac Vice:

MORITZ C. SHUMAN
H. ROSKE & ASSOCIATES LLC
500 Fifth Avenue, Suite 4810
New York, NY 10110

Attorneys for Plaintiffs ANDREAS HOHMANN and HOMANN FEINKOST GMBH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(San Francisco Division)

ANDREAS HOHMANN and HOMANN
FEINKOST GMBH,

Plaintiffs,

v.

AUTOMATTIC INC. and DOES 1-50,

Defendants.

Case No.

**COMPLAINT FOR DEFAMATION
AND DEFAMATION PER SE**

JURY TRIAL DEMANDED

Plaintiffs Andreas Hohmann and Homann Feinkost GmbH ("Plaintiffs"), by and through
their attorneys H. Roske & Associates LLP, as and for their Complaint, allege as follows:

PARTIES

1. Plaintiff Andreas Hohmann ("Mr. Hohmann") is a German citizen,
residing at Dissen a. TW in Germany.

2. Plaintiff Homann Feinkost GmbH (“Homann Feinkost”) is a German corporation, having a principal place of business at Bahnhofstr. 4, 49201 Dissen, Germany. Homann Feinkost is engaged in the business of producing and distributing delicatessen products in Germany and various European countries. Mr. Hohmann is an owner (shareholder) and member of the executive management of Homann Feinkost.

3. Defendant Automattic Inc. (“Defendant”) is a California corporation, having a place of business at 132 Hawthorne Street, San Francisco, CA 94107. Upon information and belief, Defendant is in the business of operating and hosting various websites, including websites for blogging purposes such as wordpress.com.

JURISDICTION

4. Jurisdiction is founded on 28 U.S.C. 1332, as complete diversity of citizenship exists between the parties and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

5. Venue in this court is proper under 28 U.S.C. 1391(a), as the events giving rise to this claim occurred in the State of California.

FACTS

6. On or about August 21, 2013, Defendant posted on its website <http://andreashohmannhohmann.wordpress.com> several blog entries. The blog entries, copies of which are attached hereto as Exhibit 1, insinuate that Mr. Hohmann is a “child molester” and “head of a gang”, collectively, the “Blog.” The Blog further reports that the Munich police and district attorney investigated against Mr. Hohmann because of child pornography. The allegations are felonies pursuant to Section 187 of the Criminal Code of Germany.

7. The Blog also depicts “Andreas’ Kartoffelsalat” (Translation: Andreas’ Potatoe Salad) one of the products of Homann Feinkost which shows a picture of Andreas Hohmann as the winner of a competition, accompanied by the statement: “Mir ist der Appetit auf Homann Salad vergangen! (Translation: I have lost my appetite for Homann salad!). The Blog further insinuates that Homann Feinkost advertised with Mr. Hohmann’s picture, even though he

1 was prosecuted as a child molester.

2 8. The above statements and allegations are presented as statements of fact,
3 not as an opinion or an expression of the viewpoint of the blogger.

4 9. The above statements and allegations are completely false. It is false that
5 Mr. Hohmann is a child molester, and it is false that any criminal investigation is pending against
6 him.

7 10. By letter dated September 26, 2013, the German attorneys of Mr.
8 Hohmann and Homann Feinkost informed Defendant that the content of the Blog was false and
9 defamatory and requested removal of the Blog. The letter also informed Defendant that the Blog
10 threatened Homann Feinkost's good reputation as a business in Germany.

11 11. By email dated October 23, 2013, Defendant acknowledged receipt of the
12 letter dated September 26, 2013, but refused to remove the defamatory content and asked the
13 German attorneys of Mr. Hohmann and Homann Feinkost for a "formal U.S. court order
14 including a court's decision regarding this particular content" and stated "...if any content is
15 found to be defamatory or illegal by a U.S. court of law, it will be removed immediately from the
16 WordPress.com service."

17 12. On December 4, 2013, the law firm of the undersigned sent Defendant a
18 further letter requesting removal of the Blog, but to no avail.

19 13. Upon information and belief, the Blog still has not been removed as of the
20 date of this Complaint, even though Defendants were informed that the content of the Blog was
21 false.

22 14. Defendant's publication of the Blog has caused great harm to Mr.
23 Hohmann's personal reputation.

24 15. Defendant's publication of the Blog also harms Homann Feinkost's
25 reputation as a business and causes damages, as it is designed to undermine the credibility of
26 Homann Feinkost and Homann Feinkost's business practices since it insinuates that Homann
27 Feinkost would knowingly advertise on its products with the face of a child molester.
28

COUNT 1 - DEFAMATION

16. Mr. Hohmann and Homann Feinkost reiterate and reallege the allegations set forth in paragraphs 1 through 15 above.

17. Defendant's continued showing of the Blog on its website wordpress.com constitutes publication of a statement of fact.

18. As described above, the statements contained in the Blog are false.

19. There is no privilege or defense justifying the publication of the Blog.

20. The Blog's statements have the natural tendency to injure Mr. Hohmann's and Homann Feinkost's reputation and Homann Feinkost's business, including its market position and its relationship with its customers.

21. Since Defendants were duly informed that the contents of the Blog are false and despite that knowledge continue to publish the Blog, Defendant is at the very least negligent with respect to the truth or falsity of the defamatory statements.

22. The Blog's statements have caused damage Mr. Hohmann's reputation and to Homann Feinkost's reputation and business.

COUNT 2 – DEFAMATION PER SE (MR. HOHMANN)

23. Mr. Hohmann and Homann Feinkost reiterate and reallege the allegations set forth in paragraphs 1 through 21 above.

24. Mr. Hohmann is a private figure. Defendant made and published statement(s) to third parties – persons other than Plaintiffs;

25. These third parties to whom Defendant made the statement(s) reasonably understood that the statement(s) were about Plaintiffs;

26. These third parties reasonably understood the statement(s) to mean Plaintiffs had committed crimes; and

27. Defendant failed to use reasonable care to determine the truth or falsity of the statement(s) about Plaintiffs.

28. On its face, the false and unprivileged statement that Mr. Hohmann has

1 committed a crime and is being investigated for that alleged crime, is defamatory per se.

2 WHEREFORE, Plaintiffs Mr. Hohmann and Homann Feinkost pray for relief from the
3 Court as follows:

- 4 a. For General and Special Damages according to proof in an amount
5 exceeding \$75,000;
- 6 b. To enter declaratory judgment stating that the allegations in the Blog are
7 false and defamatory;
- 8 c. Once a finding of defamatory and unprotected speech is made in favor of
9 plaintiffs, the Court is requested to order Defendant to remove the Blog
10 immediately;
- 11 d. Once a finding of defamatory and unprotected speech is made in favor of
12 plaintiffs, the Court is requested to issue a permanent injunction, enjoining
13 Defendant from publishing false and defamatory statements about Mr.
14 Hohmann;
- 15 e. Once a finding of defamatory and unprotected speech is made in favor of
16 plaintiffs, the Court is requested to issue a permanent injunction, enjoining
17 Defendant from publishing false and defamatory statements about
18 Homann Feinkost;
- 19 f. For the costs and fees of this action;
- 20 g. And for such other and further relief as to the court seems just and proper.

21 Respectfully submitted,

22 Dated: February 27, 2014

23 LAW OFFICES OF WALLACE C. DOOLITTLE

24 /s/

25 _____
26 Wallace C. Doolittle, Esq., Attorneys for Plaintiffs
27 ANDREAS HOHMANN and HOMANN
28 FEINKOST GMBH

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand that this matter be tried before a jury.

Dated: February 27, 2014

LAW OFFICES OF WALLACE C. DOOLITTLE

/s/

Wallace C. Doolittle, Esq., Attorneys for Plaintiffs
ANDREAS HOHMANN and HOHMANN
FEINKOST GMBH